

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TV-190787
PENALTY AMOUNT: \$600

Diarra Moving & Delivery Services LLC
6527 Rainier Ave S.
Seattle, WA 98118

The Washington Utilities and Transportation Commission (Commission) believes Diarra Moving & Delivery Services LLC (Diarra Moving or Company), violated Washington Administrative Code (WAC) 480-15-555, Criminal Background Checks for Prospective Employees; WAC 480-15-560, Equipment Safety Requirements, which adopts Title 49 Code of Federal Regulations (49 CFR) Part 396 – Inspection, Repair, and Maintenance; and WAC 480-15-570, Driver Safety Requirements, which adopts 49 CFR Part 395 – Hours of Service of Drivers.

Revised Code of Washington (RCW) 81.04.405 allows penalties of \$100 for each violation. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

On September 16, 2019, Commission Motor Carrier Investigator Sandra Yeomans completed a routine safety investigation of Diarra Moving and documented the following violations:

- **Four violations of WAC 480-15-555 – Failure to complete a criminal background check for every person the carrier intends to hire.** The Company failed to complete a background check for employees Moussa Tamlin, Boussey Tandia, Mohamed Tounkara, and Adama Kovta.
- **Thirty violations of 49 CFR § 395.8(a)(1) – Failing to require a driver to make a record of duty status.** Diarra Moving failed to require driver Mpaly Diarra to make a record of duty status on 30 occasions.
- **One violation of 49 CFR § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance.** The Company failed to keep the minimum required vehicle maintenance records for its one commercial motor vehicle.

The Commission considered the following factors in determining the appropriate penalties for these violations:

1. **How serious or harmful the violations are to the public.** The violations noted are serious and potentially harmful to the public. Household goods moving companies that: (1) fail to conduct criminal background checks on their employees, (2) fail to require drivers to make a record of duty status, and (3) fail to keep minimum records of inspection and vehicle maintenance put their customers, their customers' belongings, and the traveling public at risk. These violations present significant safety concerns.

2. **Whether the violations were intentional.** Considerations include:

- Whether the Company ignored Commission staff's (Staff) previous technical assistance; and
- Whether there is clear evidence through documentation or other means that shows the Company knew of and failed to correct the violation.

On January 17, 2018, the Commission received the Company's application for household goods moving authority. In the application, Mpaly Diarra, owner of Diarra Moving, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety regulations.

On November 7, 2018, Mpaly Diarra attended household goods training provided by Staff, and acknowledged receiving training pertaining to motor carrier safety regulations.

The Company knew or should have known about these requirements.

3. **Whether the Company self-reported the violations.** Diarra Moving did not self-report these violations.
4. **Whether the Company was cooperative and responsive.** The Company was cooperative throughout the safety investigation, and expressed a desire to come into compliance.
5. **Whether the Company promptly corrected the violations and remedied the impacts.** The Company corrected some of the violations prior to the conclusion of the safety investigation. Diarra Moving has not provided Staff with evidence that the violations referenced in this notice have been corrected.
6. **The number of violations.** Staff identified 12 violation types with a total of 304 individual occurrences.
7. **The number of customers affected.** The Company employs one driver and operates one commercial motor vehicle. Diarra Moving traveled 7,481 miles in 2018. These safety violations presented a public safety risk.
8. **The likelihood of recurrence.** Staff provided technical assistance with specific remedies to help the Company assess how well its safety management controls support safe operations and how to begin improving its safety performance. The Company was cooperative with Staff, and expressed a desire to come into compliance. In light of these factors, Staff believes the likelihood of recurrence is low.
9. **The Company's past performance regarding compliance, violations, and penalties.** The Company has no history of previous safety violations or penalties.
10. **The Company's existing compliance program.** Mpaly Diarra is responsible for the Company's safety compliance program.

11. **The size of the Company.** Diarra Moving currently operates one commercial motor vehicle and employs one driver. The Company reported \$30,502 in gross revenue for 2018.

The Commission's Enforcement Policy provides that some Commission requirements are so fundamental to safe operations that the Commission will issue mandatory penalties for each occurrence of a first-time violation.¹ The Commission generally will assess penalties per type of violation, rather than per occurrence, for first-time violations of those critical regulations that do not meet the requirements for mandatory penalties. The Commission will assess penalties for any equipment violation meeting the Federal Motor Carrier Safety Administration's "out-of-service" criteria and also for repeat violations of critical regulations, including each occurrence of a repeat violation.

The Commission has considered these factors and determined that it should penalize Diarra Moving \$600, calculated as follows:

- Four violations of WAC 480-15-555 – Failure to complete a criminal background check for every person the carrier intends to hire. The Commission assesses a penalty of \$100 for each occurrence of this violation, for a total of \$400.
- Thirty violations of 49 CFR § 395.8(a)(1) – Failing to require a driver to make a record of duty status. The Commission assesses a "per category" penalty of \$100 for these first-time violations.
- One violation of 49 CFR § 396.3(b) – Failing to keep minimum records of inspection and vehicle maintenance. The Commission assesses a penalty of \$100 for this first-time violation.

This information, if proven at a hearing and not rebutted or explained, is sufficient to support the penalty assessment.

Your penalty is due and payable now. If you believe any or all of the violations did not occur, you may deny committing the violation(s) and contest the penalty through evidence presented at a hearing or in writing. Alternatively, if there is a reason for any or all of the violations that you believe should excuse you from the penalty, you may ask for mitigation (reduction) of the penalty through evidence presented at a hearing or in writing. The Commission will grant a request for hearing only if material issues of law or fact require consideration of evidence and resolution in a hearing. Any request to contest the violation(s) or for mitigation of the penalty must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. *See* RCW 81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation(s) or application

¹ Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

for mitigation in a Brief Adjudicative Proceeding before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Contest the occurrence of the violation(s).
- Admit the violations but request mitigation of the penalty amount.

Please indicate your selection on the enclosed form and submit it electronically through the Commission's web portal **within FIFTEEN (15) days** after you receive this notice. If you are unable to use the web portal, you may submit it via email to records@utc.wa.gov. If you are unable to submit the form electronically, you may send a paper copy to the Washington Utilities and Transportation Commission, PO Box 47250, Olympia, Washington 98504-7250.

If you do not act within 15 days, the Commission may take additional enforcement action, including but not necessarily limited to suspending or revoking your certificate to provide regulated service, assessing additional penalties, or referring this matter to the Office of the Attorney General for collection.

DATED at Lacey, Washington, and effective October 9, 2019.

/s/Rayne Pearson

RAYNE PEARSON

Director, Administrative Law Division

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
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PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed. I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violations occurred and enclose \$600 in payment of the penalty.

2. **Contest the violation(s).** I believe that the alleged violation(s) did not occur for the reasons I describe below (**if you do not include reasons supporting your contest here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR b) I ask for a Commission decision based solely on the information I provide above.

3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reasons set out below (**if you do not include reasons supporting your application here, your request will be denied**):

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision.

OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class